Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing A Unified Intercarrier Compensation	)	
Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

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November 26, 2008

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COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.

I. INTRODUCTION AND SUMMARY.

Qwest Communications International Inc. ("Qwest") supports the Federal Communications Commission's ("Commission") goal of reforming the existing intercarrier compensation ("ICC") and universal service fund (or "USF") regimes.[1] The proposed reform to

[1] *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services,* Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WC Docket No. 06-122, CC Docket No. 99-200, CC

ICC set forth in the *FNPRM* [hereafter the "ICC Proposal"][2] is a bold attempt to fix a flawed system that is failing under its own weight. In these comments, Qwest sets forth a few minor changes to make the proposal achieve the intended results. Qwest also applauds the Commission for proposing to use USF to spur broadband deployment to unserved areas and to make broadband Internet access service more accessible to low-income consumers. Unfortunately, Qwest fears that the proposals set forth in the *FNPRM* will not achieve their intended results, and Qwest suggests that the Commission take the necessary time to rework the plans to more effectively accomplish their objectives.

As stated in the Joint Statement that accompanied the *FNPRM*, there is a consensus building around a plan on many of the key issues necessary to ICC reform. If the Commission addresses certain easily-fixed aspects of the ICC Proposal, it can accomplish the meaningful comprehensive reform that has eluded the Commission for more than six years. Specifically, the Commission should:

- Eliminate any conditions to initial ILEC subscriber line charge ("SLC") increases.
- Spell out the intended mechanics for initial ILEC SLC increases, including a carrier option to average initial SLC increases.
- Deal individually with the access stimulation issue as the intercarrier compensation reforms contained in the ICC Proposal will not have a meaningful impact on access stimulation for several years.

Docket No. 96-98, CC Docket No. 01-92, CC Docket No. 99-68, WC Docket No. 04-36, FCC 08-262, rel. Nov. 5, 2008 ("*FNPRM*"), 73 Fed. Reg. 66821, Nov. 12, 2008.

[2] In this document, unless otherwise indicated, Qwest refers to Appendices A and C, collectively, as the "ICC Proposal." As Qwest reads the documents, the only material differences between Appendix A and Appendix C are that Appendix C adds certain new language in connection with the proposed interconnection rules reflected at 270 of Appendix C and gives distinct treatment to rate-of-return incumbent local exchange carriers ("ILECs") for purposes of a revenue recovery fund as reflected at 320-21 of Appendix C.

- Clarify the ICC treatment of IP voice traffic and, preferably, rule that it should be treated just like all other traffic on the public switched telephone network ("PSTN").
- Clarify the phantom traffic provisions contained in the ICC Proposal and, most importantly, eliminate the proposed requirement that transit providers incur the termination expenses of originating carriers.
- Modify the ICC Proposal so that it does not pre-judge the status of originating access, but rather leaves it entirely to an *FNPRM*.

As demonstrated more fully below, in each instance where Qwest has suggested the elimination of some aspect of the ICC Proposal, the language at issue is unnecessary and will not further the intended goals of reform. Similarly, in each instance where Qwest suggests that language be clarified, the relevant language could be used by certain parties to justify a continuation of the arbitrage problems and paralyzing disputes that the ICC Proposal is designed to eliminate. For each of these issues, Qwest includes, in Exhibit 1, attached hereto, limited specific redline suggested modifications to the ICC Proposal that would address each issue.

While the ICC Proposal in the *FNPRM* can be made effective with a few minor changes, the same is not true for the proposal for USF reform. Qwest supports the Commission's effort to accomplish such reform and, in particular, supports the dual goals of eliminating the waste of the current USF framework while re-shaping USF into a tool to accomplish, once and for all, universal broadband deployment. However, none of the variations for USF reform contained in the *FNPRM* would accomplish that.

The *FNPRM* USF reform proposals include proposed reform of the high-cost program, instituting a pilot program within the low-income program to make broadband Internet access services more accessible to low-income customers and reform of the method for contributing to the universal service fund. With respect to the high-cost program, Qwest supports a cap on competitive eligible telecommunications carriers ("CETC") support and agrees that the identical support rule should be eliminated and supports using universal service to aid broadband deployment to unserved areas. But, Qwest can not wholly endorse any of the high-cost reform proposals because they do not address the Commission's obligations under the Tenth Circuit remand in *Qwest II*[3] and they are not designd to effectively support broadband deployment to unserved areas. The Commission cannot move forward with reform of the high-cost program, especially reform of the non-rural high-cost mechanism without addressing its *Qwest II* remand obligations. And, to provide effective universal service support for broadband deployment to unserved areas, the Commission must develop clear goals and well-targeted, sufficient support based on costs to deploy broadband to those areas.

The Lifeline Broadband Program is well-intentioned, but the Commission should refine the program to better encourage participation by ETC and low-income consumers. Additional time also may be warranted to refine the details of a new contribution methodology. But, the Commission should move to a hybrid numbers-connections methodology and do so all at one time. The Commission should provide an eighteen-month transition period and also clarify whether application of the split between assessable numbers and assessable connections is intended to mean that there will be no assessments on telephone numbers associated with business services.

The Commission should continue to press forward with these USF reform efforts. But, it should first improve these proposals in order to enable: 1) an effective universal service mechanism for spurring broadband deployment to unserved areas while meeting its legal obligations under the *Qwest II* remand and Section 254; 2) an effective program for enhancing broadband accessibility for low-income customers and; 3) a less-complicated, competitively neutral, and fair universal service contribution methodology.

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[3] *Qwest v. FCC*, 398 F.3d 1222, 1239 (10th Cir. 2005) ("*Qwest II*").

II. COMMENTS ON THE COMMISSION'S INTERCARRIER COMPENSATION PROPOSAL.

A. The Commission Should Eliminate Any Conditions To ILEC Initial SLC Increases And Spell Out The Intended Mechanics For Those Increases.

1. The Commission should eliminate language potentially restricting initial ILEC SLC increases based upon the regulatory status of the ILEC's state retail rates.

The Commission should eliminate the language in the ICC Proposal imposing two conditions on the availability of initial[4] SLC increases -- *i.e.*, those stating, respectively, that carriers must first raise state retail rates to the "maximum level permitted under state regulations" and that initial SLC increases are not available where "a carrier's state retail rates have been deregulated." The operative language for each of these conditions is potentially ambiguous and each condition will only impose high implementation costs on carriers without any corresponding benefit. Given that the new caps imposed on initial SLC increases already provide protection against unreasonable SLC increases, there is no need for such conditions. And, these conditions are particularly unfair in the case of initial SLC increases for price cap ILECs given that they, unlike rate-of-return ILECs, are effectively denied any secondary revenue recovery source under the ICC Proposal. That is, unless price cap LECs are given the same rights to a secondary revenue recovery source as is given in Appendix C to rate-of-return ILECs. Otherwise, these conditions should be eliminated.

In redlines to the "Revenue Recovery Opportunities" section of the ICC Proposal, paragraphs 297 through 328 of Exhibit 1 to these comments, Qwest proposes reasonable changes to address these concerns.

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[4] In this document, Qwest uses the term "initial SLC increases" consistently with how that term is used in the ICC Proposal -- *i.e.*, to mean those SLC increases initially made available to LECs

These issues arise out of just three sentences in the ICC Proposal. Paragraph 299 of the Proposed Plan states:

> As a prerequisite for incumbent LECs to increase their SLCs in this manner, we require that the LEC's state retail rates and any intrastate SLC be set at the maximum level permitted under state regulations. This will ensure that revenues from interstate end-user charges will not be used to recover intrastate revenue requirements until the carrier has fully availed itself of all available intrastate revenue opportunities under existing law.[5]

And, footnote 784 provides:

> To the extent that a carrier's state retail rates have been deregulated, that carrier may not increase its SLCs to recover any net loss in intrastate intercarrier compensation revenues.[6]

The language in each of these sentences is potentially ambiguous. The first excerpt may, on its face, appear to impose a seemingly innocuous requirement that carriers look to already available retail rate increases where services remain subject to some price regulation at the state level as a source of revenue recovery before seeking initial SLC increases. But, this language may be used by certain parties to make it as difficult as possible for ILECs to obtain initial SLC increases whenever retail rates are regulated at the state level. For example, some may argue that, where retail rates are still subject to rate of return regulation, carriers must pursue a rate increase through a rate case before having access to initial SLC increases. While this is clearly not the best reading of the relevant language, ambiguities like this threaten to rob the ICC Proposal of its effectiveness as carriers become bogged down in endless disputes and related proceedings to resolve ambiguities. Similarly, the second excerpt also poses potentially problematic ambiguity about when carriers must look to retail rate increases as a source of

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up to the newly defined caps as distinguished from the potential "additional SLC increases" referred to the joint board for consideration.

[5] Appendix A ¶ 299.

[6] *Id.* n.784.

revenue recovery where services are not subject to state price regulation. For example, some may argue that, if any rate in a given state is deregulated, then a carrier is precluded from recovering any lost intrastate ICC revenues whatsoever from that state. And, some may also argue that price cap regulation constitutes "deregulation" as used here. While these readings of the relevant language are also clearly not the best reading of the Commission's intent here, it behooves the Commission to avoid use of language that will be used as fodder by certain parties to try and obstruct ILEC SLC increases thereby frustrating the intent of the ICC Proposal.

These provisions also create implementation nightmares for carriers. To begin with, state retail rate categories do not correlate with federal SLC categories. For example, while the Commission's rules establish a single SLC for multiline businesses and the ICC Proposal increases the multi-line business SLC cap from $9.20 to $11.50, multiline businesses are broken down into several categories for state regulatory purposes when it comes to rate regulation at the state level.[7] These different categories may be subject to varying degrees of rate regulation in a given state. There has been no reason, historically, to distinguish between these categories when it comes to applying SLC charges and Qwest has invested considerable resources in billing systems that make no such distinction. Thus, in order to implement the proposed initial SLC increase rule, Qwest would have to develop costly new billing systems that would permit it to bill SLCs only for certain subcategories of multiline businesses. Additionally, for certain categories of service, Qwest only has a very small amount of headroom above existing rates before reaching applicable price caps. Because of the "maximum level permitted" language,

[7] For example, additional business lines in Arizona have a different regulatory category than primary business lines in multi-line accounts. And, in Colorado, 1–5 business lines in a location are in a different regulatory category than 6+ business lines at a location.

Qwest would have to incur significant implementation cost to achieve that slight increase in price before having access to initial SLC increases for that service.

The proposed conditions to ILEC initial SLC increases are also unnecessary. Indeed, it's not clear that there is any benefit from such provisions. Again, the new SLC caps already provide adequate protection in connection with ILEC initial SLC increases under the new regime. And, there is little if any value in requiring carriers to jump through costly and potentially prohibitive hoops in order to recover lost access revenue through higher retail rates, whether regulated or unregulated, rather than through higher SLC charges. The result is the same either way. Additionally, coordinating reductions in access charges with increases in end user charges and the mechanisms to track such changes become much more complex when state rate changes are involved. At the very least, any intended benefit of trying to push carriers toward rate increases as opposed to SLC increases as provided in these provisions is greatly outweighed by the problems the provisions create.

The concerns discussed above are particularly significant given the disparate treatment of price cap ILECs and rate-of-return ILECs under the ICC Proposal when its comes to revenue recovery. Both rate-of-return ILECs and price cap ILECs are subject to the same rules for initial SLC increases. But, rate-of-return ILECs are, in the end, guaranteed to be made whole by a new universal service fund from both an access revenue shift and from future line loss as they receive unconditional access revenue recovery regardless of what they get in SLC increases. On the other hand, price cap carriers are unlikely to have any access to that new fund given the stringent preconditions to their participation (*e.g.*, having to show inability to make a normal profit across all operations). While both rate-of-return LECs and price cap LECs are subject to the same rules for initial SLC increases, unreasonable restrictions on SLC increases may effectively mean that price cap LECs are denied reasonable revenue recovery opportunities -- again, unless price cap LECs are given the same rights to a secondary revenue recovery source.

2. The final order should spell out the intended mechanics for initial ILEC SLC increases, including a carrier option to average initial SLC increases.

The Commission should spell out in any final order the intended mechanics for initial ILEC SLC increases and, as part of that, ensure that carriers have the option to average initial SLC increases permitted under the ICC Proposal. The ICC Proposal grants ILECs the ability to raise their SLCs to new caps (from $6.50 to $8.00 for residential/single-line business lines, from $7.00 to $8.50 for non-primary residential lines, and from $9.20 to $11.50 for multi-line business lines) in order "to recover revenues lost from interstate and intrastate access charge reductions."[8] But, the ICC Proposal is silent on how the Commission's rules would be changed to accomplish this grant of new SLC increases. The ICC Proposal *FNPRM* raises the subject of Commission rule changes necessary to accomplish what is adopted in the ICC Proposal. And, the Commission apparently recognizes that it will be necessary to adopt changes to Parts 61 and 69 of its rules in order to enact the ICC Proposal. However, it is critical that the substance of certain rule changes be spelled out in any final order rather than be left to further deliberation in the ICC Proposal *FNPRM*. And, this is certainly the case when it comes to spelling out the rule changes that will be necessary to enable the availability of initial SLC increases for ILECs as envisioned in the ICC Proposal. This issue is too important to leave to future deliberations that may take years and that will be used by opponents of ILEC SLC increases to create roadblocks to the increases contemplated in the ICC Proposal. Specifically, the Commission should make clear in any final order that the current Part 61/69 rules will have to be revised:

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[8] Appendix A ¶ 298.

- to make clear that SLC increases are available not just to recover lost access revenues but net losses in reciprocal compensation revenues;
- to set a base year to calculate access reductions and their per-line impact on SLC increases to be used throughout the transition.
- to define, as part of the final order, how exactly the new revenue replacement component(s) will be defined so as to permit initial SLC increases up to the total amount of ICC revenues lost as a result of ICC rate reductions effected by the ICC Proposal;
- to make clear that, other than being prevented from taking SLC initial increases that exceed the total amount of revenues lost as a result of ICC rate reductions effected by the ICC Proposal, there is no other limit on or precondition to initial ILEC SLC increases granted under the ICC Proposal;
- to make clear, since the ICC Proposal contemplates multiple step downs in ICC rates over a long period of time, that SLC increases are available to recover the total amount of revenues lost as a result of ICC rate reductions effected at each stage; and
- to make clear that carriers will have the option of averaging the initial SLC increases permitted by the ICC Proposal without regard to whether their existing SLC charges are averaged or not.

While each of these details around the intended mechanics for initial ILEC SLC increases are implicit in the best reading of the ICC Proposal, this is an area where the devil is very much in the details and the Commission should provide clarity in the final order and not leave such critical details to further proceedings. The ICC Proposal provides precisely this kind of clarity in the language granting remarkably generous revenue recovery for rate-of-return ILECs through access to a supplemental Interstate Common Line Support ("ICLS") fund. There, the Commission states "the only precondition to an incumbent LEC receiving supplemental ICLS support is that the incumbent LEC is under rate-of-return regulation in the interstate jurisdiction."[9] The Commission should be equally precise and unequivocal in the operative language describing the availability of initial SLC increases for price cap ILECs. While, again,

[9] Appendix A ¶ 320.

not the better reading of the ICC Proposal, without such a clarification, some parties may argue that there are unstated preconditions to the availability of initial SLC increases.[10]

In redlines to the "Revenue Recovery Opportunities" section of the ICC Proposal, at paragraphs 297 through 328 of Exhibit 1 to these comments, Qwest proposes reasonable changes to address the concerns discussed immediately above.

B. The Commission Must Also Deal Individually With The Access Stimulation Issue -- The Intercarrier Compensation Reforms Proposed In The ICC Proposal Will Not Have A Meaningful Impact On Access Stimulation For Several Years.

The ICC Proposal implies that it resolves the "access stimulation" problem -- the phenomenon whereby some rural ILECs and competitive local exchange carriers ("CLECs") partner with providers of "free" conferencing, chat line, and similar services to artificially stimulate access traffic through rural exchanges with extremely high interstate switched access rates.[11] This conclusion is ultimately accurate -- that is, when all switched access rates move to the level of $.0007 or less, there will not be an opportunity to engage in the practice of access stimulation. But, the proposed transition plan in the ICC Proposal will not address access stimulation predation for a number of years. This is because access stimulation is made possible

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[10] For example, the ICC Proposal provides that any increase in interstate SLCs to recover lost intrastate ICC revenues must be used by the states to reduce revenue requirements to be recovered in the intrastate jurisdiction. (Appendix A ¶ 299.) Similarly, the ICC Proposal refers certain issues to the Joint Board in connection with potential future "additional increases" in SLCs or other end user charges -- *i.e.*, beyond the initial SLC increases up to the new caps granted in the ICC Proposal. (Appendix A ¶¶ 303-310.) The clarifications requested in the text will help ensure that this language is not used to require that, as a precondition to ILEC access to initial SLC increases, state proceedings first be undertaken to effect this language. There is obviously no need for such a precondition. And the more faithful reading of the ICC Proposal is that these provisions intend no such preconditions. But, explicit clarity on these points will go a long way toward eliminating potential for disputes and unnecessary and costly proceedings to implement the new regime.

by extremely high interstate access rates of some rural ILECs based on the assumption that the traffic levels of these are relatively small. Thus, the initial steps envisioned in the ICC Proposal -- reducing intrastate access rates to the level of interstate rates -- will not impact access stimulation.

And, while the Commission has moved to reduce ILEC access stimulation activities,[12] these actions have not operated to reduce access stimulation perpetrated by competitive LECs ("CLECs"). Indeed, as the Commission's actions made traffic pumping by rural ILECs less attractive, the problem simply moved to rural CLECs.[13]

In Qwest's experience, access stimulation has not declined at all overall in the past two-and-a-half years (since the problem became an epidemic).

There have been a number of suggestions on the record as to how the Commission can effectively devise a permanent solution to the access stimulation problem.[14] For the immediate

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[11] Appendix A n.845. "We believe that the transition to a uniform intercarrier compensation rate based on the additional cost methodology described above also will address the access stimulation concerns that have recently been raised."

[12] *See In the Matter of Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company,* Memorandum Opinion and Order, 22 FCC Rcd 17973 (2007), *on recon.*, 23 FCC Rcd 1615 (2008). *And see In the Matter of July 1, 2007 Annual Access Charge Tariff Filings,* Order, 22 FCC Rcd 11619 (2007), *In the Matter of Investigation of Certain 2007 Annual Access Tariffs,* Order Designating Issues for Investigation, 22 FCC Rcd 16109 (2007), Order, 22 FCC Rcd 21261 (2007).

[13] *See* Comments of Verizon In Response To Notice Of Proposed Rulemaking, WC Docket No. 07-135, filed Dec. 17, 2007 at 1 stating that "*more that 90 percent* of the amount billed to Verizon by CLECs claiming the 'rural exemption' came from carriers that are engaged in traffic pumping schemes."

[14] *See* Comments of Qwest Communications International Inc., WC Docket No. 07-135, filed Dec. 17, 2007 at 27-29; Reply Comments of Qwest Communications International Inc., WC Docket No. 07-135, filed Jan. 16, 2008 at 7-10. *And see ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Ms. Melissa Newman, Qwest, CC Docket No. 01-92, *et al.*, filed Oct. 23, 2008 at 5-6; *ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Ms. Melissa Newman, Qwest, WC Docket No. 07-135, filed May 21, 2008 ("Qwest May 21 *ex parte*").

term, Qwest submits that in most circumstances it is an unreasonable practice for a LEC (an ILEC or a CLEC) to bill tariffed access charges to an interexchange carrier ("IXC") for traffic that is essentially delivered to the LEC's own business partner. This issue has been thoroughly examined in comments in the access stimulation docket.[15] The bottom line is that, in an access stimulation scheme, the LEC is essentially delivering traffic to itself taking advantage of the terminating monopoly that it possesses to bill IXCs for what it calls the provision of access service. Qwest has suggested several rule changes that would deal with access stimulation by forbidding the billing of tariffed access charges to an IXC for artificially stimulated traffic.[16] For the interim, the Commission could go a long way towards resolving access stimulation by simply establishing that it would be *prima facie* evidence of an unreasonable practice under Section 201(b) of the Act for a LEC to share its access revenues with a "business partner" of the LEC on the basis of traffic volumes. Qwest suggests that the term "business partner" should include, in addition to the LEC itself or an affiliate of the LEC, "any entity that pays the LEC no net compensation or that receives net compensation from the LEC, in connection with the LEC's delivery of telecommunications traffic."[17] This would permit the Commission, pending final rules, to examine specific access stimulation schemes in the context of the existing requirements of the Communications Act prohibiting unreasonable practices by carriers. Qwest submits that many of the access stimulation schemes that it has witnessed would clearly fit within the

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[15] *See* Comments of Verizon In Response To Notice of Proposed Rulemaking, WC Docket No. 07-135, filed Dec. 17, 2007 at 23-25; Comments of AT&T Inc., WC Docket No. 07-135, filed Dec. 17, 2007 at 9. *And see* Comments of Sprint Nextel Corporation, WC Docket No. 07-135, filed May 17, 2007 at 7-10.

[16] Qwest May 21 *ex parte* at Attachment at 3.

[17] *See ex parte* Letter from Melissa Newman to Marlene H. Dortch, CC Docket Nos. 96-98 and 99-68 and WC Docket No. 07-135, Apr. 25, 2008 at 9-10, where Qwest set forth this definition in proposed rules.

unreasonable practice prohibition of the Act, and the Commission should clearly so state by establishing the presumption that such a practice is unreasonable.

In a new section entitled "E. Curbing Access Stimulation" added to the ICC Proposal, at paragraphs 349 through 352 of Exhibit 1 to these comments, Qwest proposes reasonable changes to address the concerns discussed immediately above.

C. The Commission Should Clarify The ICC Treatment Of IP Voice Traffic And The Best Approach Is To Treat It Like All Other Traffic On The PSTN.

The Commission should clarify the ICC treatment of IP voice traffic under the ICC Proposal and, as discussed more fully below, it is clear that the best approach is to treat it like all other traffic on the PSTN. The ICC Proposal would classify IP/PSTN traffic as an information service.[18] However, with respect to intercarrier compensation, the plan provides that, while this traffic "ultimately will be subject to the final uniform reciprocal compensation rates established pursuant to the methodology adopted in this order," the Commission will "maintain the status quo for this traffic during the transition…"[19] If this remains the operative language for IP/PSTN traffic in a final order, the Commission will have lost an opportunity to end a significant area of arbitrage and costly carrier disputes in this area will continue and will sap the effectiveness of the new regime. If the Commission merely categorizes IP/PSTN traffic as an information service, without more clarification of what the status quo is, the treatment of that traffic for ICC purposes turns on the correct application of the Commission's enhanced service provider ("ESP") exemption. As detailed below, it is Qwest's position that the correct application of the ESP exemption dictates that the ICC treatment of IP/PSTN traffic (*i.e.*, whether access or reciprocal

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[18] The ICC Proposal uses "IP/PSTN" as a "short-hand" for any service that "allows a customer to originate a communication on an IP network and terminate it on a circuit-switched network." C, Note 520.

[19] Appendix A n. 564.

compensation charges apply) depends on where the VoIP ISP's[20] point of presence ("POP") is located. If the Commission does nothing more to address the status of IP/PSTN traffic, it should clarify that this is the current application of the ESP exemption to this traffic.

But, while this is the best reading of the application of the ESP exemption in this context, Qwest recognizes that, as a policy matter, it makes no sense to treat IP/PSTN traffic any differently than any other traffic on the PSTN. Numerous carriers have contended that the ESP exemption does not apply to such traffic and, therefore, that, even if such traffic is deemed an information service, it would be subject to the same treatment as other traffic on the PSTN.[21] Other parties have contended, incorrectly, that applying the ESP exemption to such traffic means that its traffic is wholly exempt from access charges under all circumstances.[22] The Commission can ensure that IP/PSTN traffic receives identical treatment as all other traffic by either ruling that its ESP exemption does not apply to such traffic or by, as Qwest has proposed, forbearing

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[20] In this discussion, Qwest uses the term "VoIP ISP" to refer to information service providers who originate IP/PSTN traffic.

[21] *See* Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption, WC Docket No. 08-8, filed Jan. 11, 2008 at iii-iv, 5-6 and Petition of the Frontier Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption, WC Docket No. 08-205, filed Sept. 30, 2008 at iii-iv, 5 (arguing, in the alternative that, should the Commission conclude that IP traffic on the PSTN is subject to the ESP Exemption, the Commission should forbear from its application). Other parties who have shared this position. *See, e.g.*, Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Independent Telephone and Telecommunications Alliance and the Eastern Rural Telecommunications Association, WC Docket No. 08-8, filed Feb. 19, 2008 at 2-3. *And see* Comments of Verizon, WC Docket Nos. 07-256 and 08-8, filed Feb. 19, 2008 at 10-12; Comments of AT&T Inc., WC Docket Nos. 07-256 and 08-8, filed Feb. 19, 2008 at Section I.

[22] *See* Petition for Forbearance of Feature Group IP West LLC, Feature Group IP Southwest LLC, UTEX Communications Corp., Feature Group IP North LLC, and Feature Group IP Southeast LLC, filed Oct. 23, 2007. *And see* Public Notice, 22 FCC Rcd 21615 (2007), Order, 23 FCC Rcd 346 (2008), Erratum, WC Docket No. 07-256, rel. Jan. 18, 2008.

from the application of the ESP exemption to this traffic -- either of which would be a change of law rulings.[23] If it does so, it will also be critical that the Commission clarify how jurisdictionalization of traffic and use of interconnection or access services will work for IP/PSTN traffic under the new regime.

Unless the Commission goes further than the current draft of the plan, the ICC Proposal's approach would place IP/PSTN traffic within the treatment afforded to other information services. Most significantly, if carriers elected to use access services for termination of IP/PSTN traffic, then tariffed access rates would continue to apply. If however, the VoIP ISP elected to purchase retail services from an ILEC or CLEC (as an end user subject to the ESP Exemption from access charges), then the status of IP/PSTN traffic would be evaluated based on the location of the VoIP ISP POP (not the location of the IP voice subscriber), and the call would be subject to reciprocal compensation or access charges depending on the relative locations of the VoIP ISP POP and the PSTN called party.[24] Again, these conclusions reflect the better reading of the current language in the proposal.[25] But, unless it goes further and changes the law as Qwest

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[23] *See ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Ms. Melissa Newman, Qwest, CC Docket No. 01-92, *et al.*, filed Sept. 24, 2008 at 15.

[24] This is precisely what Qwest has done when it negotiates interconnection agreements with CLECs to the extent they address IP voice traffic. Qwest also allows VoIP ISPs to include this same approach in retail PRS (Primary Rate Service) contracts. All of this, however, anticipates that the Commission would categorize IP/PSTN traffic as an information service and would apply the ESP exemption in a traditional fashion. As discussed in further detail in the text, Qwest believes the better approach, from a policy standpoint, is to treat IP/PSTN traffic identically to other traffic on the PSTN -- *i.e.*, to change this application of the ESP exemption.

[25] If the ICC Proposal is left unchanged, carriers delivering IP/PSTN traffic would need to ensure that their contracts were consistent with these principles, and to modify the contracts if necessary under the contractual change of law provisions. If a contract is in evergreen status, the basic principles recited herein would be a mandatory part of any contract but, if different from the expired contract, would take effect contemporaneous with the effective date of the draft order.

suggests below, the Commission should eliminate any potential disputes on this subject by making this explicit.

Inevitably, however, if the Commission does not go further than the current draft of the proposal, disputes about the proper treatment of such traffic will continue and at great cost to the effectiveness of the new regime. As noted, a number of VoIP providers have taken some very strange positions to avoid paying for services purchased from LECs.[26]

While the certainty that the ESP exemption approach described above brings would be welcome, an alternative approach that does not result in special treatment for IP/PSTN traffic is clearly preferable from a policy perspective. Thus, the Commission should undertake the following either directly by rule or by forbearance action under Section 10 of the Act. The Commission should rule that its ESP exemption does not apply to such traffic or, as Qwest has proposed, forbear from the application of the ESP exemption to this traffic -- either of which would be change of law rulings.[27] It simply does not make sense from a policy perspective to

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[26] These carriers suggest, essentially, the "magic wand" theory of regulation for IP/PSTN traffic -- *i.e.*, that such traffic is automatically local in all circumstances regardless of "inconvenient" details like the location of the calling and called parties, how the VoIP ISP uses interconnection or access services on the PSTN, etc.

[27] The Commission has already compiled a record in the Feature Group IP and Embarq Local Operating Companies forbearance petitions proceedings, WC Docket Nos. 07-256 and 08-8, demonstrating that a forbearance approach to the issue of equalizing the access treatment of IP/PSTN traffic and other voice services is warranted. First, treating a VoIP POP as an end-user premises is not "necessary to ensure that the charges, practices, classifications, or regulations . . . are just and reasonable and are not unjustly or unreasonably discriminatory." In fact, the requested forbearance would eliminate a particularly thorny discrimination because it would equalize the regulatory status of a VoIP ISP POP and a traditional IXC voice POP. Second, treating a VoIP ISP POP as an end-user premises is "not necessary for the protection of consumers." To the contrary, especially as the forbearance will allow both VoIP and traditional voice interconnection to transition to the ultimate uniform termination rate along the same path, consumers will be better protected than if the paths were disparate. Finally, the public interest will be served by harmonizing the status of VoIP ISP POPs and traditional voice POPs. Avoiding discrimination between VoIP and traditional voice services during the transition will

treat IP/PSTN traffic as any different from other like services that utilize the switching architecture of the PSTN in the very same manner.

If the Commission takes this approach, it will need to address two additional issues. First, it is critical that the Commission clarify how jurisdictionalization of IP/PSTN traffic will work under the new regime. Specifically, the Commission should clarify that, under this approach, the location of the ISP POP will no longer be relevant for purposes of determining jurisdiction. Rather, as with other services using the PSTN, geographical end-points and not telephone numbers would be the proper determinants of whether a call is local versus non-local (or, for non-local traffic, whether interstate or intrastate access charges apply). As Qwest explained in previous filings, carriers may use telephone numbers as a surrogate for billing purposes provided, however, that, as in other contexts such as nomadic wireless use, there must be an ability for carriers to ensure that, in the end, billing accurately reflects jurisdiction.

Second, the Commission should clarify how interconnection/access will work for IP/PSTN traffic under the new regime. This can be very straight-forward. There are three possible varieties of interconnection/access that must be addressed because VoIP ISPs could conceivably get such traffic to the PSTN using services available to end users, IXC services or CLEC services. In this scenario, where, again, the Commission has forborne from the application of the ESP exemption to IP/PSTN traffic (or entered a ruling changing the application of the ESP exemption from the view discussed above), VoIP ISPs would no longer be able to deliver IP/PSTN traffic to the PSTN over local facilities purchased as an end user. However, they could conceivably still purchase access services for IP/PSTN traffic directly and such traffic would, like any other traffic sent over such facilities, be subject to access charges

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have the added benefit of "promot[ing] competition among providers of telecommunications (again, so long as there exists some disparity between access charges and reciprocal compensation charges as will be the case in the transition laid out in the ICC Proposal). Alternatively, VoIP ISPs could use the services of IXCs, who, in turn, would deliver their traffic to the PSTN over access facilities and access charges would apply just like all other traffic using the PSTN in the same way. Finally, VoIP ISPs could use the services of CLECs to deliver their IP/PSTN traffic to the PSTN. Of course, consistent with existing law, those CLECs can only have interconnection rights to the PSTN under Section 251 in the first place if they obtain such interconnection for the purpose of offering a telecommunications service.[28] But, assuming that is the case, the most logical approach to interconnection would be for terminating ILECs who receive IP/PSTN traffic from a CLEC to bill CLECs (rather than treating the VoIP ISPs as an IXC) at the tariffed access rate for access traffic and at reciprocal compensation rates for local

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services," which by definition meets the public interest test of Section 10.

[28] *See* 47 C.F.R. §§ 51.5 (definition of "*Telecommunications service*") and 51.100(b). Classification of IP/PSTN traffic as an information service means that the information services themselves continue to be recognized as non-telecommunications services. However, in this interconnection scenario, the transmission service that brings the information service to a local exchange would be common carrier in nature. This position was made crystal clear in Time Warner Cable's Request for Declaratory Ruling. *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007) ("*Time Warner*"). In Time Warner, several ILECs refused to interconnect with Time Warner's interconnected VoIP service, claiming that, as an information service, a VoIP provider had no interconnection rights and was obligated to purchase local exchange and other services out of the appropriate tariffs. Time Warner countered that it was not interconnecting a VoIP service to the ILEC networks under Section 251. To the contrary, Time Warner stated that it was interconnecting to the ILEC networks through the common carrier services of two CLECs, and that these two carriers were providing a wholesale common carrier service that entitled them to interconnection rights under Section 251. *See* Time Warner Petition for Declaratory Ruling, WC Docket No. 06-55, filed Mar. 1, 2006 at Section I. Ultimately, the Commission held that, because Time Warner interconnected through a CLEC that was providing telecommunications service, the ILECs could not deny the CLEC interconnection rights. Tellingly, the Commission emphasized that "the regulatory classification of the service provided to the ultimate end user has

traffic. Of course, once rates for all traffic become uniform, these terminating ILECs would bill CLECs at the new uniform rate for all traffic.

In redlines to the "B. Comprehensive Reform, 3. Legal Authority" section of the ICC Proposal reflected at paragraphs 207-238 of Exhibit 1 to these comments, Qwest proposes reasonable changes to address the concerns discussed immediately above.

D. The Commission Should Clarify The Phantom Traffic Provisions In The ICC Proposal And Eliminate The Proposed Requirement That Transit Service Providers Incur The Termination Expenses Of Originating Carriers.

In its "Measures to Ensure Proper Billing" section, the ICC Proposal would, essentially, adopt the US Telecom proposed interim solution for phantom traffic by mandating minimum signaling stream requirements for all traffic. This would represent an important interim step toward addressing phantom traffic and one that Qwest has long supported. However, in that same section, the ICC Proposal goes well beyond what that industry consensus plan requested and imposes a potentially broad new obligation on transit service providers, requiring them to pay the "highest applicable rate" for termination for certain traffic when another carrier fails to meet certain obligations (hereafter the "termination expense transfer provision"). At the same time, the ICC Proposal fails to resolve lingering disputes about the fundamental regulatory status of transiting in which the users of transit service, among other things, often refuse to enter into agreements with transit service providers or compensate them for their services. The Commission should eliminate the termination expense transfer provision as the US Telecom proposal alone represents a reasonable interim step to address phantom traffic -- particularly if it is adopted as part of a comprehensive reform plan that will ultimately eliminate the rate disparity that leads to the arbitrage schemes that, in turn, cause phantom traffic. Failing that, the

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no bearing on the wholesale provider's rights as a telecommunications carrier to interconnect under Section 251." *Time Warner*, 22 FCC Rcd at 3520-21 ¶ 15.

Commission should, if it imposes such an obligation, also clarify once and for all in any final order the regulatory status of transit service, the right of transit service providers to require that carriers using their transit services enter into contracts for those services, and the right of transit service providers to charge a "just and reasonable" rate for transit service that allows them to recover the significant implementation costs that new obligations will impose in addition to their rightful recovery for their other services. If the Commission imposes this new obligation, the Commission should also clarify its scope and clarify what services provided by ILECs would be potentially covered by it. In particular, it should clarify that this potential new obligation is not intended to extend to jointly provided switched access ("JPSA"). Finally, the Commission should also clarify the new signaling rules for multi frequency ("MF") signaling traffic in light of a conflicting current industry standard for local traffic using MF signaling.

In redlines to the "Measures to Ensure Proper Billing" section of the ICC Proposal reflected at paragraphs 329 through 348 of Exhibit 1 to these comments, Qwest proposes reasonable changes to address the concerns discussed immediately above.

1. The ICC Proposal on phantom traffic.

The phantom traffic solution contained in the ICC Proposal has two parts. The first requires originating carriers to populate signaling streams for traffic using both Signaling System 7 ("SS7") and MF signaling technology, with either calling party number ("CPN") or charge number ("CN"), as appropriate.[29] In doing so, the plan expressly recognized that "a limited exception is needed in situations where industry standards permit, or even require, some

[29] Appendix A ¶¶ 328-335.

alteration in signaling information by an intermediate service provider."[30] The Commission also leaves the current exemptions of Rule 64.1601(d) (*e.g.*, software limitations of SS7, etc.).[31]

The second aspect of the phantom traffic solution would "require that a service provider, e.g., transit provider, delivering traffic that lacks any of the signaling information required by our rules as amended herein, or that does not otherwise provide the required call information, for example by providing an industry standard billing record, to the recipient, must pay the terminating service provider's highest termination rate in effect at the time the traffic is delivered to the terminating service provider."[32] While the order permits transit carriers "in turn, to pass along the termination charges to the provider that delivered the applicable traffic to them, in addition to any otherwise-applicable charge for their services," this assurance provides cold comfort in light of the current difficulty transit service providers have in obtaining agreements and compensation for their current services. The ICC Proposal apparently leaves such issues for an *FNPRM* when it seeks comment regarding the question of "whether the reforms we adopt today necessitate the adoption of any rules or guidelines governing transit service."[33]

2. Background -- the current status of transit services.

It is essential, when considering whether to impose the proposed termination expense transfer obligation for transit service providers, that the Commission consider the current status of transit services. Transit services occur when an intermediate carrier, one that has no relationship with an end user involved in the traffic at issue, transports traffic received from the

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[30] *Id.* ¶ 335. In that instance, the ICC Proposal provides that it does "not intend to change standard industry practice with respect to the content of the signaling stream," clarifies that "[s]ervice providers that follow standard industry practice in this way will not be considered in violation of the prohibition on altering signaling information."

[31] *Id.* ¶ 331.

[32] *Id.* ¶ 337.

calling party's carrier to the terminating carrier (who has the customer relationship with the called party end user). As transit service providers have no end user involved in the traffic at issue, the only potential source of compensation for their services (unlike the originating and terminating carriers, each of which have end users involved in the call) are the carriers that hand them traffic for termination. At the same time, as a general rule, transit service providers currently have no ability to prevent other carriers from using them as transit service providers -- *i.e.*, they can not stop the traffic from coming to them once the originating carrier is interconnected with the tandem for other non-transit services. As a result, transit service providers have become embroiled in disputes both with originating carriers who refuse to enter into appropriate agreements for their services or to compensate them at reasonable rates and with terminating carriers who seek to bill the transit provider rather than seeking compensation from the originating party.

Transit service also has a distinct regulatory status (*e.g.*, distinct from traffic falling within the scope of Section 251(b)(5)) under the Act. Most importantly, the Commission has jurisdiction over agreements between carriers to provide transiting and over the use of carrier networks for the purpose of transiting traffic between two carrier networks by virtue of its role as administrator of the new "comprehensive . . . scheme of telecommunications regulation" created by the Act.[34] While the Act, when it comes to local competition matters, gives states authority under Sections 251 and 252, those provisions do not extend to transit services. As the Commission acknowledged in its *2005 ICC Further Notice*, "[t]he Commission's rules define the

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[33] *Id.* ¶ 347.

[34] *See Indiana Bell Tel. Co. v. Indiana Utility Regulatory Comm'n*, 359 F.3d 493, 494 (7th Cir. 2004); *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 378 n. 6, 119 S. Ct. 721, 142 L. Ed. 2d 834 (1999); *MCI Telecommunication Corp. v. Bell Atlantic Pennsylvania*, 271 F.3d 491, 510 (3d Cir. 2001).

term 'interconnection' to mean 'the linking of two networks for the mutual exchange of traffic' and not 'the transport and termination of traffic.'"[35] Thus, the "interconnection" obligations imposed upon telecommunications carriers generally and upon ILECs under Sections 251(a)(1) and 251(c)(2), respectively, have no application to transiting services. As the D.C. Circuit has recognized, Section 251(a) (like Section 251(c)(2)), on its face, deals only with physical connections and therefore does not impose a transiting duty on carriers.[36] Similarly, Section 251(c)(2) plainly only speaks to the ILEC duty to provide interconnection with the ILEC's network. Nor does Section 251(b)(5), whether under the Commission's earlier interpretation limiting Section 251(b)(5) to local traffic or under the potential new interpretation reflected in the ICC Proposal, address the compensation to be paid to a transit service provider when it transits traffic.[37]

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[35] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4741-42 ¶ 128 (2005) (citing 47 C.F.R. § 51.5) ("*2005 ICC FNPRM*").

[36] *See AT&T v. FCC*, 317 F.3d 227, 234-35 (D.C. Cir. 2003).

[37] Third-party transiting services by a carrier unaffiliated with the terminating carrier also do not fall within the ambit of Section 251(b)(5) "transport and termination." That provision, and the Commission's implementing rules, contemplate that reciprocal compensation payments will be made for the transport and termination of traffic on the terminating carrier's network. *See, e.g.*, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4737-38 ¶ 120 (2005)("The reciprocal compensation provisions of the Act address the exchange of traffic between an originating carrier and a terminating carrier, but the Commission's reciprocal compensation rules do not directly address the intercarrier compensation to be paid to the transit service provider."); *Local Competition Order* ¶ 1039 (defining "transport" as that term is used in Section 251(b)(5) to mean transmission "from the interconnection point between *the two carriers* to the terminating carrier's end office switch"); *Atlas Telephone Company v. Oklahoma Corporation Commission*, 400 F.3d 1256, 1261 (10th Cir. 2005)("Under the Act, reciprocal compensation is based solely on the costs of transport and termination incurred by the terminating carrier.") To the extent carriers trading traffic rely on intermediate providers, that carriage does not supplant the otherwise applicable intercarrier compensation obligations. Rather, underlying wholesale services are properly accounted for by the carriers involved via tariff or via commercial arrangements. *See, e.g., id.* (recognizing that transport may be provided over the terminating carrier's own facilities or "[m]any alternative arrangements").

In other words, transit arrangements between a transit provider and an originating carrier are offered subject to the sole authority and jurisdiction of the Commission. As such, they are subject to Sections 201 and 202 of the Act. Thus, these services can only be legally compelled after notice and a hearing as required under Section 201(a) of the Act, and then only upon order by the Commission. As such, transit service charges are the result of commercial negotiation subject to the requirements of Sections 201 and 202. In addition, transiting can be purchased from an ILEC such as Qwest, under the infrastructure sharing provisions of Section 259 of the Act. Section 259 obligates ILECs to provide, upon request and under certain conditions, "public switched network infrastructure, technology, information, and telecommunications facilities and functions" to requesting carriers. Such infrastructure sharing is specifically exempt from common carrier regulation under the remainder of Title II of the Act. But, whether sought pursuant to Section 201(a), Section 259 or some other provision,[38] carriers are under no

[38] Since Qwest is also a Regional Bell Operating Company ("RBOC"), some of the elements that comprise transiting can be part of Qwest's obligations under Section 271 "access and interconnection." Section 271 requires an RBOC to provide, among other things, unbundled local transport and unbundled local switching. While these elements could not be used solely to provide transiting, once a LEC has access to them for the provision of local exchange service, there is nothing to prevent the LEC from using them for transiting as well. Notably, states may not regulate the price of, or require the offering of, those network elements that an RBOC offers by way of contract in order to comply with the requirements of Section 271. State commissions are granted specific authority for the approval of contracts under Section 252(e)(1) but their authority is limited to those agreements entered into "pursuant to section 251," not Section 271. *See* 47 U.S.C. § 252(a)(1) *and see Indiana Bell*, note 34, *supra*, 359 F.3d at 497. Under the Commission's *Triennial Review Order* ("*TRO*") and *Triennial Review Remand Order* decisions, ILECs are no longer required to provide unbundled switching or shared transport pursuant to Section 251(c)(3). *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17319-20 ¶ 534 (2003), *corrected by Triennial Review Order Errata,* 18 FCC Rcd 19020 (2003). *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Order on Remand, 20 FCC Rcd 2533, 2536-37 ¶ 5 (2005). And, Section 271

obligation to provide transiting service and can not be put under an obligation to provide transiting service to a LEC in the absence of a contract or a tariffed offering.[39]

It is also noteworthy here that the Commission's historic bedrock policy of intercarrier compensation is that the carriers who are the cost causer(s) for any given traffic should incur the intercarrier compensation liability related to such traffic.[40]

Because of the factors described above and the Commission's failure to-date to clarify the regulatory status of transiting despite having teed-it-up for resolution in its *2005 ICC FNPRM*,[41] transit service providers continue to have difficulty obtaining agreements from carriers that hand them traffic and obtaining payment for their services.

3. The proposed termination expense transfer provision should be eliminated from the ICC Proposal.

In light of the current issues involved with transit services described immediately above, the proposed termination expense transfer provision is quite like throwing lighter fluid on an already smoldering fire. Where transit service providers already have difficulty obtaining appropriate agreements and compensation for their existing services, this new obligation would now put transit service providers entirely at the mercy of both originating and terminating

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is an exclusively federal statutory provision, with states being limited to an advisory capacity during the Section 271 process. *See* 47 U.S.C. § 271(d)(2)(B) *and see Indiana Bell*, note 34, *supra*, 359 F.3d at 495, 497.

[39] *In the Matter of Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges,* WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192 (2002), *petitions for review dismissed, AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003).

[40] *See, e.g.*, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15850-51 ¶ 691 (1996). *And see Texcom, Inc. v. Bell Atlantic Corp.*, File No. EB-00-MD-14, Memorandum Opinion and Order, 16 FCC Rcd 21493, 21495 ¶ 6 (2001) (citations omitted).

[41] *See* note 34, *supra.*

carriers and into the middle of their disputes. And, it is entirely unnecessary. The first part of the ICC Proposal's phantom traffic provisions (US Telecom signaling rules) will go a long way, together with the comprehensive reform accomplished by the plan, to eliminating phantom traffic. As Qwest has also repeatedly demonstrated in its prior filings on phantom traffic, the Commission could make significant further progress addressing phantom traffic by simply clarifying that all carriers exchanging local traffic are responsible for their own traffic and therefore have the ability and the obligation to enter into agreements[42] and undertake their own recordings to cover such exchange of traffic. These agreements could, among other things, address specific billing alternatives for traffic that would otherwise be seen as phantom traffic. In no event should the Commission now make transit service providers responsible when originating carriers either fail to meet the Commission's new signaling rules or to give terminating carriers their rightful compensation.

4. If the proposed termination expense transfer provision is not eliminated, the Commission should at least include a clarification in the final order on the regulatory status of transit services.

If, despite the significant concerns described above, the Commission imposes a termination expense transfer obligation like that reflected in the ICC Proposal, it should, at the very least, accompany its order with a ruling both clarifying the obligations of originating carriers with respect to agreements as described immediately above and clarifying the regulatory

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[42] Qwest does not support requests that the *T-Mobile Order* be extended to all such agreements. *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005), *appeals pending sub nom. Ronan Telephone Co., et al. v. FCC*, Nos. 05-71995, *et al.*, appeals stayed until Mar. 16, 2009 (9th Cir., Order, Sept. 12, 2008). Qwest asks, instead, that the Commission clarify that the Act already facilitates the accomplishment of such agreements, but also clarify that only some of those agreements fall under Section 252. Others fall under Sections 201 and 202 of the Act.

status of transiting consistent with the preceding section. Again, the rules proposed in the ICC Proposal will increase the cost of providing transit service. And the plan expressly provides that transit providers may pass along termination charges to the providers that deliver transit traffic to them "in addition to any otherwise-applicable charge for their services." There should, therefore, be no doubt whatsoever that transit service providers have pricing flexibility to take advantage of this. The Commission should confirm, among other things, that transit providers are entitled to charge a "just and reasonable" rate for providing transit service as those terms are used in Sections 201 and 202 of the Act. In the event it is not inclined to adopt Qwest's view of the regulatory status of transiting, the Commission should at least confirm that transit service providers have flexibility to price their transit services. Some parties have argued that the Commission can regulate transiting under Section 251(a). The Commission is free to prescribe regulations implementing Section 251(a) and there are no statutory pricing requirements for Section 251(a) services so the Commission could grant providers appropriate pricing flexibility under that legal rationale as well. At the very least, the Commission should make clear once and for all that transit service providers are not required to provide transit service at Total Element Long Run Incremental Cost ("TELRIC") rates.[43]

5. If the proposed termination expense transfer provision is not eliminated, the Commission should also clarify the scope of that obligation.

Similarly, if the Commission imposes a termination expense transfer obligation like that reflected in the ICC Proposal, it should also include, in any final order, several important clarifications about the scope of the new obligation. First, the Commission should clarify with

[43] And, as described above, transit service is not covered by any other statutory pricing methodology such as the additional costs standard addressed in the ICC Proposal. *See* note 37, *supra.*

greater precision what circumstances trigger an intermediate carrier's termination expense transfer obligation in order to avoid inevitable and costly disputes as originating and terminating carriers "whipsaw" intermediate carriers by maximizing their terminating compensation liability. For example, any new rule should clarify that intermediate carriers are under no obligation to populate incomplete signaling streams. Currently, there is no technology enabling intermediate carriers to do so and developing such capability will entail mammoth expense. Paragraph 329 of Appendix C states that "the prohibition on altering or stripping SS7, MF ANI, or CN signaling information obligates intermediate service providers to pass, unaltered, whatever signaling information they receive." But, at the same time, the operative language of the proposed new rule might be argued to provide that one of the triggers for the new obligation is if a transit service provider delivers "traffic that lacks any of the signaling information required by our rules as amended herein…"[44] The Commission should clarify that the only circumstance where the state of the signaling stream information can trigger this obligation is where an intermediate carrier fails to pass, unaltered, whatever signaling information it receives. Or, the Commission can at least clarify that, where intermediate service providers pass, unaltered, whatever signaling information they receive and where they pass the required call information identifying the carrier from whom they received the traffic at issue either through call records or through summary reports, the obligation isn't triggered. While clearly not the best reading of the ICC Proposal, without such a clarification, some may argue that, even if intermediate carriers identify the carrier giving them the traffic, they would still be liable for "the terminating service provider's highest termination rate" if, due to no fault of their own, the required signaling stream information was not present. Footnote 875 of Appendix A, stating "We agree with commenters

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[44] Appendix A ¶ 337.

who note that intermediate service providers that provide, to subsequent service providers in a call path, information sufficient to identify the provider that delivered the traffic to the intermediate provider should not be responsible for terminating intercarrier payments for that traffic" should resolve this issue. But history suggests that whenever there is any room for debate, costly disputes arise, and the new proposed obligation for transit providers leaves them holding the bag.

The Commission should also clarify when the obligation to pay the terminating service provider's highest termination rate is triggered due to the type of call information provided by the intermediate carrier. The ICC Proposal should already make clear that this obligation is satisfied whenever the intermediate carrier provides call information through call records or summary information that identifies the OCN of the carrier that handed it the traffic. Again, footnote 875 should resolve this issue as well, but, the Commission should make explicit in any final order precisely what constitutes "information sufficient to identify the provider that delivered the traffic to the intermediate provider."

Further, the Commission should also clarify more precisely how the termination expense transfer obligation operates if it is triggered. The terminating expense transfer provision should obviously not be available for any and all traffic that the terminating party cannot bill. But, there is a potential problem under the current language because the traffic at issue will flow to terminating carriers over joint use facilities that carry transit traffic and other traffic. Terminating carriers do not separately track transit traffic that they receive over these facilities. But, history suggests that, unless there is further clarity, disputes will arise because terminating carriers typically try to pass compensation obligations off to intermediate carriers for any traffic (*i.e.*, transit and non-transit traffic) they are unable to bill. This is another area where the

Commission can eliminate potential costly and unnecessary disputes by a simple clarification that the transit service providers records or summary call information establish the starting place for that obligation.

It is also critical that the Commission exempt traffic delivered using MF signaling or intra-company SS7 from this billing record obligation. The current systems of carriers such as Qwest are unable to create a billing record for such traffic and developing such a capability is prohibitively expensive. Additionally, given that MF signaling technology is not the preferred signaling, originating carriers should not be given this incentive to continue its use.

Additional clarification is also needed with respect to the language permitting transit carriers "in turn, to pass along the termination charges to the provider that delivered the applicable traffic to them, in addition to any otherwise-applicable charge for their services."[45] Specifically, the Commission should make it explicitly clear that this new "highest rate" rule overrides existing agreements for transit services to the extent they are inconsistent. Otherwise, this is potentially an empty right.

The Commission should also add language making clear that the terminating expense transfer provision will not take place immediately but only after a transition that allows transit carriers to develop the necessary systems changes that will be required by whatever rule the Commission adopts. Indeed, the Commission should go further and provide that the new obligation will not be effective until the final stage -- effectively making the final uniform rate the applicable termination rate and thereby eliminating other potential areas of dispute.

[45] *Id.* ¶ 338.

6. If the proposed termination expense transfer provision is not eliminated, the Commission should also add language clarifying the services covered by the obligation.

If the Commission imposes the proposed termination expense transfer obligation, the Commission should also clarify what services potentially provided by a LEC would be potentially covered by such an obligation. Based on the better reading of the ICC Proposal, the Commission intends to cover transit service providers.[46] As described in the background section above, transit services, by definition, are intermediate provider services provided only in connection with traffic that is local or intraLATA LEC-provided toll traffic -- *i.e.* traffic where an intermediate carrier, usually a large ILEC, transports traffic from the originating carrier to the terminating carrier. When a comparable three-carrier traffic routing occurs in the access context, the intermediate carrier receives interstate or intrastate tariffed access compensation from the IXC in the form of JPSA based upon long-standing industry guidelines outlined in the Ordering and Billing Forum ("OBF") through the Multiple Exchange Carrier Access Billing ("MECAB") guidelines. Thus, JPSA services are clearly a different animal. Under the better reading of the ICC Proposal's termination expense transfer provision, JPSA services would not be implicated by this proposed new rule. However, the Commission should make this explicit to eliminate any potential ambiguity.

7. The Commission should make one clarification to the proposed new signaling rules in connection with MF traffic.

Finally, the Commission should also clarify the new signaling rules for MF signaling traffic in light of a conflicting current industry standard for local traffic using MF signaling. Current industry standard practice is that Automatic Number Identification ("ANI") is not passed

[46] The ICC Proposal would impose the obligation on "a service provider, e.g. transit provider…" Appendix A ¶ 337.

on with local calls in the MF protocol. And, the ICC Proposal makes clear that it does not intend to override standard industry practice.[47] But, the ICC Proposal would "require service providers using MF signaling to pass CPN information, or the charge number if it differs from the CPN, in the Multi Frequency (MF ANI) field."[48] While this proposal will work for many of the traffic types that use MF signaling protocols (*e.g.*, traffic destined to interexchange carrier platforms, traffic destined to operator services platforms, and traffic destined to 911 platforms), it will not work for local traffic. The proposed rule would require a modification of industry practice/standards that would result in redefining the protocol for certain traffic and would require software changes to the nation's switching network to accommodate such a change. Qwest does not believe this is the intent of the Commission, but a clarification on this point will, again, remove any potential ambiguity.

E. The ICC Proposal Should Not Pre-Judge The Future Status Of Originating Access

The ICC Proposal order finds that originating access should be left untouched for the time-being pending an *FNPRM*.[49] The ICC Proposal does find that originating access rates can not be increased during the transition.[50] And, it concludes that originating access must be eliminated by the end of the 10-year transition. While Qwest supports leaving originating access unchanged and subject to an *FNPRM* and supports a finding that originating access charges can not increase under the new regime, the Commission should not prejudge the future status of originating access. Among other potential problems, this finding may be used by certain parties to justify arbitrage schemes designed to improperly avoid originating access charges. It also may

[47] *Id.* ¶ 331.

[48] *Id.* ¶ 332.

[49] *Id.* ¶ 299.

leave the erroneous impression that there are not important issues to resolve before eliminate originating access altogether. For example, the Commission must address the need to allow carriers to recover the revenues in connection with originating access. Regardless of one's position on these issues, there is no need to pre-judge the status of originating access. Rather, its status should be left entirely to an *FNPRM*.

In redlines reflected at paragraphs 232 and 356 of Exhibit 1 to these comments, Qwest proposes reasonable changes to the ICC Proposal to address the concerns.

III. COMMENTS ON THE USF REFORM PROPOSALS.

A. Qwest Supports The Commission's High-Cost Support Reform Efforts, Its Reforms For CETC Support And Its Efforts To Use Universal Service Support To Aid Broadband Deployment To Unserved Areas.

In the *FNPRM* the Commission also seeks comment on alternative universal service reform plans within the three proposals. Each proposal offers a plan for high-cost universal service reform. The first and third proposals, Appendices A and C, respectively, for high-cost reform are quite similar with the primary differences being certain treatment of high-cost support for rate of return ILECs and for CETCs. These two reform plans generally propose shifting all of the high-cost support for basic voice services in currently-identified, high-cost areas for providing those services to support for broadband deployment in those areas. The remaining proposal, Appendix B, does not address broadband support, but offers reverse auctions to replace the existing mechanisms for distributing high-cost support to existing high-cost areas.

For years Qwest has advocated reform of the high-cost universal service mechanisms, and especially reform of the non-rural high-cost mechanism. Consequently, Qwest supports the Commission's efforts to undertake and propose concrete reform of the high-cost universal

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[50] *Id.*

service program. Qwest continues to support the Commission's adoption of a cap on CETC support and agrees that the identical support rule should be eliminated. And, Qwest supports the Commission's efforts to use universal service support to aid deployment of broadband to unserved areas.

At the same time, however, Qwest cannot wholly endorse any of the high-cost reform proposals appended to the *FNPRM* because the proposals fail to address the Commission's obligations under the Tenth Circuit remand in *Qwest II* and are not designed to effectively support broadband deployment to unserved areas.

1. The Commission should cap CETC support and eliminate the Identical Support Rule.

The Commission should continue to place a cap on CETC high-cost support and eliminate the identical support rule. There is clear data that high-cost support to CETCs has been the primary cause of the significant growth in the high-cost support fund in recent years. And, the Commission should eliminate the "identical support" rule which provides CETCs with the same per-line, high-cost universal service support amounts that ILECs receive. To the extent a CETC's costs to provide wireless service are less than the ILEC's costs to provide wireline service, the identical support rule provides an inefficient incentive to the CETC to provide service in the ILEC's service area.[51] This inefficient incentive is even more pronounced in rural ILEC service areas. Because rural carriers receive universal service support based on their embedded costs, when a rural carrier's cost per-line increases -- such as when it loses lines to CETCs -- its high-cost support per-line increases as well. And, pursuant to the Commission's identical support rule, this higher per-line support is available to CETCs in the rural ILEC's

[51] And, given the significant increase in wireless carriers designated as ETCs, it seems likely that their costs are less than those of the ILECs in the areas in which the wireless carriers have sought ETC designation.

service area. But, as the Commission has recognized, because the CETC receives this high-cost support irrespective of its own costs to provide service, there is little, if any, incentive for the CETC to invest in or expand its facilities to areas with lower population densities.[52] The Commission should not continue to require that high-cost support be used in this inefficient manner. Instead, high-cost support should be provided to CETCs based on their own costs of providing the supported services. This reform should occur immediately.

2. The Commission should aid broadband deployment to unserved areas through universal service support.

The first and third high-cost reform proposals recognize that broadband Internet access service has become an increasingly important service for American consumers and propose to modify the existing high-cost support system "fundamentally to spur deployment and ensure that all Americans have access to broadband."[53] Qwest supports this goal of revising the Commission's universal service rules to facilitate universal access to broadband services. To achieve that goal, the Commission must develop an effective strategy for supporting the deployment of broadband to areas currently unserved.

But, the Commission cannot reform the existing non-rural high-cost support mechanisms without addressing its obligations under the Tenth Circuit's remand in *Qwest II*.[54] Further, in implementing a universal service broadband support program, the Commission should be confident that the initiative will be successful and will comport with the terms of Section 254. As currently structured, the proposals offered do not provide that confidence.

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[52] *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1471-72 ¶ 10 (2008).

[53] Appendix A ¶¶ 22, 20 & same text in Appendix C.

[54] *Qwest II*, 398 F.3d at 1239.

a. The Commission should not implement any reform of the non-rural high cost support mechanism without addressing its obligations under the Tenth Circuit's Remand in *Qwest II.*

The Commission cannot satisfy its obligations under the Tenth Circuit remand by simply replacing the existing non-rural high-cost support mechanism for basic voice services with a mechanism for promoting broadband deployment. The Commission still has an obligation to uphold the Section 254(b) principles with respect to the existing supported services. Thus, the Commission still has an obligation under *Qwest II* to demonstrate that any new high-cost funding mechanisms enable reasonably comparable rates and services between rural and urban areas and provide sufficient funding for currently supported services in high-cost areas served by non-rural carriers.[55]

Under *Qwest II*, the Commission must: (1) revise its definition of what constitutes "sufficient" high-cost support to non-rural carriers to consider more fully the principles in Section 254(b) of the Act including affordability; (2) revise its definition of "reasonably comparable" to meet the Commission's obligation to preserve and advance universal service; and (3) modify its methodology for distributing federal high-cost support to ensure that it provides "sufficient" support and "reasonably comparable" rates and services in rural areas served by non-rural carriers. It has now been more than three years since the Tenth Circuit held the Commission's rules governing the non-rural high-cost support mechanism invalid for the second time and stated that it "fully expects the FCC to comply with [its] decision in an expeditious

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[55] Alternatively, if the Commission intends to remove high-cost universal service support for existing supported services, the Commission should find based on the record that the goals of universal service for basic voice services have been met, that no further support is necessary to maintain the affordability and availability of those services in high-cost areas, and that basic voice service is no longer a supported service. This is not a finding that should be made hastily.

manner, bearing in mind the consequences inherent in further delay."[56] The Commission cannot take steps to address high-cost program reform, and especially reform of the non-rural distribution mechanism, and wholly ignore its obligations under the Tenth Circuit remand.

Qwest has previously addressed the elements that are necessary to satisfy the Tenth Circuit's mandate.[57] In particular, the Commission should reduce the existing benchmark and re-target additional federal support to the highest cost wire centers (*i.e.*, those with a cost per line of more than 125 percent of the national average urban rate) served by the non-rural ILECs. Such action is necessary because the current study-area based methodology provides little if any federal support to most of these wire centers, while competition in urban areas, such as Phoenix and Omaha, has undermined implicit subsidies.[58] In turn, the high-cost reform plans, all of which propose capping and freezing non-rural ILEC support, actually conflict with the Commission's obligations under *Qwest II*.[59] The Commission should not cap or freeze high-cost support to non-rural carriers without evaluating such actions in concert with its *Qwest II* remand obligations.

b. Effective universal service support for broadband deployment requires clear goals and well-targeted, sufficient support based on broadband deployment costs to unserved areas.

Critical to any proposal to spur broadband deployment is consideration of the proposal's likely effectiveness in accomplishing the goal of "ensuring that broadband is available to all

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[56] *Qwest II*, 398 F.3d at 1239.

[57] *See* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from Shirley Bloomfield and R. Steven Davis, Qwest, CC Docket No. 96-45, dated May 5, 2008.

[58] *Id.*

[59] As the Joint Board recognized in its Recommended Decision, addressing the *Qwest II* remand could result in increasing federal high-cost support to non-rural carriers and thus the Joint Board declined to include that support in its proposed caps on high-cost support. Recommended Decision, 22 FCC Rcd 20477, 20487 ¶ 42 (2007).

Americans,"[60] and means of measuring that effectiveness. To design an effective universal service program for enabling broadband deployment to unserved areas, the Commission should not only create the support mechanism, but also set clear, realistic goals and performance measures for the program, and ensure well-targeted, sufficient support for the areas that need broadband deployment. Critical to this effort is tying broadband support directly to the costs to deploy broadband to unserved areas.[61]

Using "frozen" current high-cost support to encourage broadband deployment assumes that (1) the current allocation of federal high-cost support is appropriately targeted for both the support of voice grade services and the expansion of broadband services and (2) the existing support is sufficient to encourage broadband deployment in areas that are already high-cost areas for deploying and maintaining affordable, quality basic voice service. But, neither assumption has been tested and both are likely wrong. The Commission should take this opportunity to use both the positive and negative lessons of the current support mechanisms to create a new support mechanism for broadband deployment to unserved areas that implements the successes but does not replicate or perpetuate the problems of those mechanisms.[62]

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[60] Appendix A ¶ 4.

[61] Additionally, the Commission should ensure that the program is consistent with Section 254. The Commission can adopt a broadband support mechanism under its general statutory powers delegated to it by Congress under Section 1 of the Act (47 U.S.C. § 151), as well as its ancillary jurisdiction under Sections 4(i) and 303(r) (47 U.S.C. §§ 154(i) & 303(r)). *See ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Mr. Craig J. Brown, Qwest, CC Docket No. 96-45, filed Aug. 14, 2007 at the attached *ex parte* Letter, CC Docket No. 96-45, filed Aug. 9, 2007 at 2-5.

[62] Qwest has previously proposed a new federal universal service program that would provide one-time grants to selected applicants to deploy broadband to unserved areas. *See ex parte* Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from Ms. Melissa Newman, Qwest, dated July 9, 2007, CC Docket No. 96-45 and its attached "Qwest's Proposal For Broadband Deployment To Unserved Areas." Qwest again commends that proposal to the Commission for its consideration in crafting a successful, efficient, and cost-effective universal service support program for broadband deployment to unserved areas.

B. The Commission Should Refine The Proposed Lifeline Broadband Pilot Program.

The goal of making broadband Internet access service more accessible to low-income customers is an admirable one. But, the Broadband Lifeline/LinkUp Pilot Program as proposed does not seem well designed for success. The Commission should take some additional time to craft the details of the program to better encourage participation by both ETCs and low-income consumers.

As part of that effort the Commission should (1) consider permitting provider participation without requiring broadband availability throughout the provider's participating service areas, (2) consider not requiring providers to sell equipment they do not otherwise provide when offering their broadband Internet access services in order to participate in the program, (3) analyze existing rates for broadband Internet access service in order to evaluate what support amounts will provide "affordable" broadband Internet access service for qualifying low-income customers, and (4) focus on program outreach efforts to and by state, local and tribal agencies and provide funding to support cooperative outreach and streamlined enrollment processes.

C. The Commission Should Move To A Hybrid Numbers-Connections Universal Service Contribution Methodology All At Once.

The proposals also include plans for reform of the universal service contribution methodology. The plans in Appendix A and C are very similar and generally propose to alter the contribution methodology to require contributions from all providers based on a flat-fee per telephone number associated with residential services, but continue to use the current revenues-based contribution methodology for business services while the Commission conducts a proceeding to design a connections-based contribution methodology for business services. Appendix B offers a similar switch to a numbers-based contribution methodology for residential services, and offers a connections-based methodology for business services, for immediate and simultaneous implementation. Qwest supports moving to a hybrid numbers-connections contribution methodology and recommends that any such change occur all at once in one implementation period, whether that is immediately, or after further consideration of the appropriate connections methodology. Additionally, the Commission should clarify whether in splitting the assessment methodologies between residential services and business services it intends that there will be no assessments on telephone numbers associated with business services.

Moving to a hybrid numbers-connections contribution mechanism should be competitively neutral and require equitable contributions of all providers who use North American Numbering Plan ("NANP") numbers and all providers of interstate telecommunications services. The new mechanism should also enable the federal universal service burden to be shared fairly among all end users of competing services.

Qwest generally agrees with the proposals' definition of assessable numbers, and agrees that there should be no exception to the per-number assessment for wireless family plan numbers. With respect to the assessable connections of Appendix B, Qwest has not evaluated whether the number of tiers, where the line is drawn between the tiers, and the flat fees per tier, as proposed, are appropriate. Nevertheless, Qwest agrees that using flat rates for assessments should eliminate the confusing fluctuation in federal USF charges that customers currently experience. Additionally, including assessments on interstate telecommunications services that are not associated with a telephone number helps to ensure that every provider of interstate telecommunications services is contributing to the universal service fund as required by Section 254(d).

The Commission should implement all its intended changes to the contribution methodology in one implementation period. If the Commission concludes that more time is necessary to evaluate and design the contribution mechanism for connections, then it should hold off implementing the change to numbers for residential services as well. It will take significant resources and time to implement a new contribution methodology in Qwest's systems, and it will be administratively easier to only have to go through the whole process one time. Additionally, the Commission should provide eighteen months to implement the changes. As Qwest has previously described, Qwest anticipates that for implementing a change of this magnitude it will need eighteen months to complete the following steps:

- Identify the subject matter experts and technical resources that will work on the effort. Create a detailed project plan and assign resources accordingly. (One month)
- Identify and document all of the impacted business rule and process changes required by the Commission order. (Two months.)
- Identify all impacted software components and corresponding changes to those components as a result of the Commission order and related business rule/process changes. Design/document the detailed changes required for those software components. (Two months.)
- Modify the impacted software components per the system design and then document and test each software component. (Six months.)
- Create a test environment containing all of the modified system components and document/test that the modified components function correctly. (Two months.)
- Document and test the new system components to ensure they meet the requirements of the Commission order. Test the entire billing flow from order to bill issuance to ensure proper functionality. (Two months.)
- Design, document, and deliver via training all appropriate information to enable those working with the new systems to perform the appropriate business functions required by the Commission order and in alignment with the system changes. (Two months.)

- Schedule and migrate all software components to the production environment and notify all operations teams to begin to comply with the Commission order. (One month.)[63]

Further, as the Commission did with local number portability ("LNP"), it should permit providers to recover carrier-specific direct costs of implementing the Commission's mandate -- in this case developing and deploying a new contribution methodology -- through a monthly charge to end users for a specific period of time. In authorizing providers to recover certain costs of implementing LNP, the Commission determined that allowing carriers to recover carrier-specific direct costs for LNP through a charge to end users allows cost recovery in a competitively neutral manner.[64] In implementing a new contribution methodology, there may be significant costs incurred by contributing carriers to enable contributions to universal service on the new basis. The Commission has added competitive neutrality as an additional principle to be considered in implementing the universal service program.[65] Permitting cost recovery here in a manner similar to that permitted for LNP would recognize and support the competitive neutrality principle in the universal service context and ensure that the costs of implementing a new universal service contribution methodology will not discourage competition or otherwise interfere with the goal of making telephone service universally available.

Finally, the Commission should clarify how the split between assessable numbers and assessable connections is to be applied. The Commission should make clear that contributions on assessable numbers will only be on assessable telephone numbers associated with residential

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[63] *See ex parte* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Melissa E. Newman, Qwest, dated April 7, 2006, CC Docket No. 96-45.

[64] *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11707 ¶ 9, 11725-26 ¶ 39 (1998).

[65] *See In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801 ¶ 47 (1997).

services and not on telephone numbers associated with business services, if this is what the Commission intends. Thus, contributions on business services would only be based on the connections associated with those services and not on any telephone numbers associated with those services.[66]

IV. CONCLUSION.

For the reasons stated above, Qwest respectfully requests that the Commission take the actions described herein.

Respectfully submitted,

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November 26, 2008

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[66] This clarification is especially important since the proposed split is different from proposals that assessable numbers would generally include all numbers assigned to specific end users that provide the ability to send and receive calls, not just those numbers assigned to end users purchasing residential services. *See, e.g., ex parte* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Melissa E. Newman, Qwest, dated September 24, 2008, CC Docket No. 96-45, WC Docket No. 06-122; letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Mary L. Henze, AT&T Services, Inc. and Kathleen Grillo, Verizon, dated October 20, 2008, WC Docket No. 06-122, CC Docket No. 96-45.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System; 2) served via e-mail to cpdcopies@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/Richard Grozier

November 26, 2008